

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL MISC.APPLICATION No. 5454 of 1999****For Approval and Signature:****HONOURABLE MR.JUSTICE D.H.WAGHELA**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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SAURABH NATWARLAL SORPARKAR - Applicant(s)**Versus****STATE OF GUJARAT & 1 - Respondent(s)**

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Appearance :

MR PRAKASH K JANI for Applicant(s) : 1,

Mr HL Jani, Addl.PUBLIC PROSECUTOR for Respondent(s) : 1,

NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA**Date : 04/04/2007****ORAL JUDGMENT**

1. None present for the respondent, except
learned APP, though served.

2. The petitioner has approached this court under section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code") praying the relief of quashing the complaint registered as Criminal Case No.1289 of 1999 in the Court of learned Metropolitan Magistrate, Ahmedabad. The complaint, in the said criminal case, is filed for the offence under section 138 of the Negotiable Instruments Act, 1881 (for short, "the Act"), against eight persons including the company, its Chairman, Managing Director, other Directors, President, and General Manager. The petitioner before this court is joined therein as accused No.6 and as Director of the Company that is alleged to have issued the cheque which was returned.

3. Learned counsel Mr P.K. Jani, appearing for the petitioner submitted that, in an identical case between the same parties, this court had, by order dated 27.4.2000 in Criminal Misc. Application No.1025 of 2000, quashed the complaint as against the present petitioner and the present petition was required to be allowed for the same reasons and on the same grounds. It was further submitted that the

petitioner was joined as the accused person in his capacity as the Director of the company whereas, factually, the cheque in question was issued on 1.2.1999 while the petitioner had resigned as Director of the company with effect from 3.10.1998. Therefore, the proceedings against the petitioner were indisputably untenable and an abuse of the process of Court.

4. No reply to the averments made in the petition is filed by the original complainant and the learned APP fairly conceded that, on facts, the matter was similar to the earlier one disposed of by this court, as aforesaid.

5. Accordingly, the petition is allowed and the Criminal Case No.1289 of 1999 pending in the court of learned Metropolitan Magistrate, Ahmedabad, and the process issued thereunder, as far as the petitioner is concerned, are quashed. Rule is made absolute accordingly with no order as to costs.

sd/-
[D. H. Waghele, J.]

msp